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BIRCH STEWART KOLASCH & BIRCH			LONG, LUANA ZHANG	
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FALLS CHURCH, VA 22040-0747			1782	
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11/23/2010	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/590,996	MAATTAA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LUANA Z. LONG	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 September 2010.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-3 and 5-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3, 5-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

1. Applicant's amendment to the claims in the reply filed 9/09/2010 is acknowledged and entered. Claims 1-3, 5-9 are currently pending in the application. Claim 4 is cancelled.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1-3, 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. Regarding claim 1, the added limitation of "an uncontaminated heat-seal" is not described in the Specification or the original Claims as filed. Therefore, applicant does not have possession of the claimed invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-3, 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

7. Regarding claim 1, the word "uncontaminated" is unclear. It is not understood what is meant by the phrase "uncontaminated heat-seal." Is the heat-seal uncontaminated by air? By water? By food? By grease? Due to the unclarity of this phrase, the claim as a whole is indefinite.

8. Claims 2-3 and 5 are rejected for their dependence on claim 1.

9. Claim 6 recites the limitation "the mouth" in line 5 of the claim. There is insufficient antecedent basis for this limitation in the claim.

10. Claims 7-8 are rejected for their dependence on claim 6.

***Claim Rejections - 35 USC § 103***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. **Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bemiss (already of record).**

13. Regarding claim 1, Bemiss teaches a ready-made food package (Figs 12-18) consists of a tray (10b) provided with a rim flange, the tray containing packaged food (col. 3, lines 25-26; col. 4, line 49) which is capable of contaminating the rim flange during cooking; and a lid (12b) closing the tray, and in which the lid (12b) of the package is made of polymer-coated board (paperboard and has a plastic coating 61 thereon)

(col. 4, lines 20-21), wherein the lid, which is capable of closing the tray after baking, extends over an upper surface of the rim flange and is bent under the rim flange of the tray providing a heat-seal to a lower surface of the rim flange (11b) by means of the polymer coating on the lid (col. 4, lines 27-41) (see Figures 15-18). Due to the indefiniteness of claim 1, Examiner interprets Bemiss's heat-seal (between the lid and the lower surface of the rim flange) being "uncontaminated" since the Drawing of Bemiss shows the heat-seal is not contaminated by any substance.

14. Bemiss is silent in regards to the *tray* being made of a polymer-coated board.

15. However, Bemiss's invention is to making packages from cartons, which are paperboards or cardboards (col. 1, lines 7-12). In addition, polymer-coated boards are conventional and well-known for heating foods.

16. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have the tray of Bemiss also be one made of a polymer-coated board, since the lid of the tray of Bemiss is a polymer-coated board (col. 4, lines 20-23), since Bemiss discloses that the tray can be rigid, since Bemiss discloses that the tray is conventional (col. 1, lines 61-64), and since polymer-coated boards are conventional.

17. Regarding claim 2, Modified Bemiss discloses that the lid is additionally heat-sealed to the upper surface of the rim flange of the tray, providing a double sealing line provided by the polymer coating on the lid and the tray (sealing can be effected above the flange 11b at 65) (see Fig. 18 and col. 4, lines 29-30).

**18. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bemiss in view of Kane [US 3,904,104].**

19. Bemiss is relied upon from above for rejecting claim 1.

20. Regarding claims 3 and 5, Modified Bemiss discloses that an inner surface (plastic coating 61) of the lid is made out of a heat-sealable polymer (may be polyethylene) (col. 4, lines 20-24). However, Modified Bemiss is silent in regards to the heat-sealable polymer being a polyester. Modified Bemiss is also silent in regards to an inner surface of the tray being made of a heat-resistant polyester.

21. Kane is relied upon to teach the conventionality of a paperboard laminate comprising an inner layer of amorphous polyethylene terephthalate (PET) (abstract), which is a polyester. Kane further discloses heat-sealing the PET layers of adjacent sides together to form corners (col. 3, lines 40-44), and that PET forms excellent heat seals to itself (col. 7, lines 64-67). The PET layer of Kane is also considered "heat-resistant."

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the polyethylene coating on the package of Modified Bemiss with the PET coating on the package of Kane, with the predictable result of having a PET-coated tray and lid, capable of being heat-sealed to each other. One having ordinary skill in the art would be motivated to make this substitution since both plastics are heat-sealable and suitable for coating paperboards for use as food containers, and the substitution of one conventional polymer coating for another for the purpose of coating paper food containers, is obvious.

**23. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bemiss in view of Applicants' Admitted Prior Art.**

24. Regarding claim 6, Bemiss discloses a method for manufacturing a ready-made food package having a tray (10b) provided with a rim flanges (11b) and a lid (12b) made of a polymer-coated board (paperboard and has a plastic coating 61 thereon) (col. 4, lines 20-21), comprising the steps of: placing a food in a raw state in the tray containing a rim, closing the tray with a lid by placing the lid (see Fig. 13, col. 1, lines 54-55) over the mouth of the tray, bending the edges of the blank under the rim flange (11b) of the tray and by heat-sealing the edges to the lower surface of the rim flange by means of the polymer coating of the board (see Figures 14-18 and col. 4, lines 16-41), and then heating or boiling the package (col. 3, lines 15-26).

25. Bemiss is silent in regards to the *tray* being made of a polymer-coated board.

26. However, Bemiss's invention is to making packages from cartons, which are paperboards or cardboards (col. 1, lines 7-12). In addition, polymer-coated boards are conventional and well-known for heating foods.

27. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have the tray of Bemiss also be one made of a polymer-coated board, since the lid of the tray of Bemiss is a polymer-coated board (col. 4, lines 20-23), since Bemiss discloses that the tray can be rigid, since Bemiss discloses that the tray is conventional (col. 1, lines 61-64), and since polymer-coated boards are conventional.

28. Bemiss is also silent in regards to *baking* the food in the tray, and closing the tray with the lid *after* the step of baking.

29. However, Applicants admit on page 2, paragraph 1 of the Specification that the food industry manufactures ready-made food packages, in which the tray portion acts as a baking tray at the stage of cooking the food. The food is placed in the tray in a raw state, it is baked at the baking temperature and finally the tray containing the finished ready-made food is closed with a lid.

30. Since it is known in the food industry to manufacture a ready-made food by putting raw food in a tray, baking the food in the tray, and then closing the tray with a lid after baking, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the food package of Modified Bemiss in the process of the prior art. One having ordinary skill in the art at the time of the invention would be motivated to do this since Bemiss discloses two heat seals on the top and bottom of the flange of the tray (see Figure 18) and a mechanical seal (mechanical closure) (col. 4, lines 51-56), which strengthens the seal of his food package for shipping and handling purposes; since Bemiss contemplates his package being heated in ways other than boiling; and since the package of Bemiss would alleviate the existing prior art problems of grease contamination on seals (page 2, para 2).

31. Regarding claim 7, Modified Bemiss discloses that the lid is also heat-sealed to the upper surface of the rim flange of the tray thereby forming a double sealing line therebetween (See Fig. 18).

32. Regarding claim 8, Modified Bemiss discloses that the lid contains creased folding lines (scored line 64) (col. 4, line 26), along which bending of the edges is carried out (see Figs. 14-18).

33. Regarding claim 9, Bemiss discloses a method of using a tray containing a rim flange (11b) and made of polymer as a baking tray in the manufacture of ready-made food packages, comprising closing the tray with a lid made of polymer-coated board (col. 3, lines 15-26), wherein the edges of the lid are bent under the rim flange of the tray and heat-sealed to the lower surface of the rim flange by means of the polymer coating (see Figs. 15-17, col. 4, lines 27-31).

34. Bemiss is silent in regards to the tray being made of a polymer-coated *board*, and closing the tray with a lid *after* a step of baking.

35. However, Bemiss's invention is to making packages from cartons, which are paperboards or cardboards (col. 1, lines 7-12). In addition, polymer-coated boards are conventional and well-known for heating foods.

36. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the tray of Bemiss so it is made of a polymer-coated board, since the lid of the tray of Bemiss is a polymer-coated board (col. 4, lines 20-23), since Bemiss discloses that the tray can be rigid, since Bemiss discloses that the tray is conventional (col. 1, lines 61-64), and since polymer-coated boards are conventional.

37. Applicant's Admitted Prior Art is relied upon from above for rejecting claim 6.

38. It would also have been obvious to one having ordinary skill in the art at the time of the invention to use the food package of Modified Bemiss so that the tray is closed with a lid after a step of baking, since this is a known way of making a cooked food package. One having ordinary skill in the art at the time of the invention would be motivated to use the food package of Bemiss in this manner due to the advantages of

multiple seals (see Figure 18), which strengthens the closure of his food package; and since the package of Bemiss would alleviate the prior art problem disclosed by the applicants (page 2, para 2).

### ***Response to Arguments***

39. Applicant's arguments filed 9/9/2010 have been fully considered but they are not persuasive.

40. In regards to arguments on page 8-9 of the Remarks against the reference Bemiss, these arguments are not persuasive. In regards to comments that the Bemiss reference does not address the same prior art problems as applicant, this is acknowledged. However, the Bemiss reference teaches a food tray with a heat-seal between the lid of the tray and the rim flange of the tray, on the underside of the rim flange (see Figure 18). By providing the same type of heat-seal as that of applicant's invention, the Bemiss reference offers a solution to applicant's prior art problem of grease contamination. The food package of Modified Bemiss (see rejections above) is the same as that claimed by applicant, therefore, the fact that Bemiss does not disclose the same prior art problems as that of applicant does not outweigh the obviousness of a double sealed tray made out of polymer-coated carton.

41. Applicant also argues that the package of Bemiss is explicitly intended to be heated in hot boiling water. Examiner agrees that Bemiss's preferred embodiment is for the food package to be boiled, however, Bemiss also discloses a broad heating of the food package not limiting explicitly to boiling (col. 3, lines 25-26). In addition, the

method of use disclosed by Bemiss does not affect the patentability of the food package. The food package of Bemiss is capable of performing numerous other uses and heating methods. Applicant also argues that one skilled in the art would not contemplate the tray of Bemiss being polymer-coated since this is not suited for boiling in a hot water bath. These arguments are acknowledged, however not persuasive. The Bemiss reference specifically discloses the invention being methods of making packages from cartons (col. 1, lines 7-9) and refers to the package in Figure 12 as a carton or tray closed with a lid (col. 1, lines 52-53), suggesting that polymer coated cartons would be appropriate for his invention. Applicant also argues that the tray of Bemiss, being made out of polyethylene, would melt at oven temperatures, and that the seals 65 and 67 would also melt. First of all, applicant has not recited any baking temperatures in the method claims, therefore, the argument of the polyethylene melting at "oven temperatures" is vague and unsupported. Also, in view of the amended claims, Bemiss is being modified (see rejection above) so that the polyethylene coating is substituted with a PET coating, and thereby making this argument moot.

### ***Conclusion***

42. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

43. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUANA Z. LONG whose telephone number is 571-270-1152. The examiner can normally be reached on 8:30 AM - 5:00 PM.

45. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

46. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1782

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